propose that a portion of the Gauley River be established as a national recreation area, and that the lower portions of the Meadow and the Bluestone be designated as the State's first wild and scenic rivers. This bill will also allow for much-needed boundary modifications in the New River Gorge National River.

Protecting these rivers in their pristine state will give people the opportunity to enjoy their unmatched beauty for years to come. Federal designation of these rivers will go a long way toward luring more tourists to southern West Virginia. Each year, 700,000 tourists visit the New River Gorge National River. Being part of the National Park System will provide increased awareness—both nationally and internationally—to the recreational opportunities available on these rivers. It will give West Virginia's wild, wonderful rivers more publicity than we could ever buy.

The recently funded New River Parkway, the just-completed West Virginia Turnpike, and the soon-to-be-completed Interstate 64 will enable tourists to visit these areas on modern, safe, and convenient highways. Indeed, West Virginia's interstate system is now among the most elaborate and accessible in the Nation.

The Gauley River National Recreation Area will cover a 24.5-mile segment from Summersville to Swiss. With its boulder-strewn rapids, high ledges, narrow chutes, and tortuous channels, this area provides one of the most spectacular whitewater experiences in the country. In 1986, whitewater recreation on the Gauley alone pumped over $16 million into the local economy.

The Meadow River, from the Route 19 Bridge to its confluence with the Gauley, is in a wild and primitive condition. For rafting enthusiasts, it's even more demanding than the Gauley due to its narrow channel and steep grade.

One of the most pristine rivers in the United States is the Bluestone. Well known for its beauty and magnificent gorge, superb opportunities exist for fishing, camping, rafting, and canoeing on the Bluestone.

The Greenbrier River was also studied under the legislative mandate. The study, conducted by the Forest Service, determined that 133 miles of the river were eligible for Federal protection. Under the provisions of the 1968 Wild and Scenic Rivers Act, 106 miles were classified as scenic and 27 miles were judged to be recreational. The Forest Service recommended that the river be protected by the State Natural Stream Preservation Act—not by the Federal Government through congressional action.

I have received hundreds of letters, numerous phone calls, and have met with many residents of Pocahontas and Greenbrier Counties on the prospect of including the Greenbrier in the system of federally protected rivers. To give people a chance to be heard on the proposal, I sponsored public meetings in Durbin, Marlinton, and Lewisburg. What I heard from my constituents was an overwhelming desire to protect their river—but not through designation as a scenic river.

Moreover, any plan that is put forth to protect the Greenbrier must address the issue of flood control. In 1985, the region was devastated by a flood. Currently, the Corps of Engineers is preparing a feasibility study that will suggest various alternatives for flood protection. This study will be ready for release and public discussion in January 1988.

Based on what I have heard from my constitutents and the unresolved flood control issue, I have decided not to include the Greenbrier River in this legislation. Since there is an enormous interest in protecting the river, I will offer my assistance in developing a local plan that will protect the river—while not precluding effective flood control.

Mr. President, without a doubt, the rivers that I have proposed for Federal designation are worthy of inclusion in the system of wild and scenic rivers. Enactment of this legislation will complement the existing New River Gorge National River and greatly enhance the economic development of southern West Virginia through tourism. I urge my colleagues to pass this legislation as soon as possible.●

By Mr. COHEN (for himself, Mr. BENTSEN, Mr. DECONCINI, and Mr. MURKOWSKI):

S. 1721. A bill to improve the congressional oversight of certain intelligence activities, and to strengthen the process by which such activities are approved within the executive branch, and for other purposes; to the Select Committee on Intelligence.

INTELLIGENCE OVERSIGHT ACT

● Mr. COHEN Mr. President, I am introducing today, along with three members of the Intelligence Committee, Senators BENTSEN, DECONCINI and MURKOWSKI, a bill entitled the Intelligence Oversight Act of 1987, which is an effort to strengthen the statutory framework already existing in this area and to ensure that Congress will continue to play an active, effective role in the oversight of U.S. intelligence activities, including covert actions.

It is important to recognize at the outset that this bill would place no new restrictions upon the President, either in the conduct of intelligence activities generally or of covert actions in particular. Rather, it is aimed at strenthening the congressional oversight process, by clarifying the responsibilities and roles of both branches and removing the other ambiguities under current law. To be sure, the effectiveness of any law will ultimately depend upon the mutual trust and good faith of both parties, but it nevertheless behooves us—in the interests of good government—to make our mutual responsibilities under the law as clear and certain as we can.

As has been reported in the press in recent weeks, the President has, in fact, taken a number of concrete steps in this direction. These were reported to the Intelligence Committees last August. He has told us that there will not be oral findings in the future, that such findings will not authorize covert actions retroactively, and that all covert programs will be periodically subjected to review. These steps are welcome and commendable. But one is nevertheless obliged to recognize that these are policies which do not have the force of law, which may be subject to exceptions or waivers approved by the President in special circumstances—ones that would be highly classifed—and which are not binding upon any future administrations.

The bill I am introducing today accepts and builds upon the commitments already made to the Intelligence Committees by the President. It does not purport to be the final answer, but it does represent a comprehensive attempt to restructure, and where necessary, improve the current system of intelligence oversight.

Appended to the bill is a lengthy section-by-section analysis which sets forth its purposes in great detail. I wish only to highlight several of them here.

First, the bill would place all of the laws bearing upon intelligence oversight in one place in the United States Code, and would restructure those laws in a logical, coherent fashion. Accordingly, the Hughes-Ryan Amendment, which was an amendment to the Foreign Assistance Act of 1961, would be moved to that portion of the intelligence oversight statute which deals with limitations on the funding of intelligence activities. Moreover, the limitation set forth in Hughes-Ryan would be expanded to cover agencies of the executive branch other than CIA which may be used to carry out covert actions. This has been the policy within the executive branch for several years, although Hughes-Ryan itself only applies to CIA.

Second, the bill would eliminate much of the ambiguity under current law by specifying those congressional oversight requirements which pertain to intelligence activities and those which pertain to covert actions—termed in the bill "special activities." Under current law, these requirements are unclear.

Third, the bill would, for the first time, provide explicit statutory authority for the President to authorize covert actions, or "special activities," in support of U.S. foreign policy objectives, provided they are authorized in accordance with the requirements set forth in the bill. As I mentioned at the outset, these requirements do not entail new restrictions on covert actions, but are designed to improve the

to the Comittee on Energy and Natural Resources.

By Mr. COHEN (for himself, Mr. BENTSEN, Mr. DECONCINI, and Mr. MURKOWSKI.

S. 1721. A bill to improve the congressional oversight of certain intelligence activities, and to strengthen the process by which such activities are approved within the executive branch, and for other purposes; to the Select Committee on Intelligence.

By Mr. INOUYE (for himself, Mr. EVANS, Mr. BYRD, Mr. CRANSTON, Mr. SIMPSON, Mr. DECONCINI, Mr. BURDICK, Mr. DASCHLE, Mr. MURKOWSKI, Mr. MCCAIN, Mr. BINGAMAN, Mr. BOSCHWITZ, Mr. COCHRAN, Mr. CONRAD, Mr. DOMENICI, Mr. GORE, Mr. GRAMM, Mr. LEVIN, Mr. MATSUNAGA, Mr. PELL, Mr. REID, Mr. RIEGLE, Mr. ROCKEFELLER, Mr. RUDMAN, Mr. STAFFORD, Mr. SANFORD, Mr. SIMON, Mr. WIRTH, Mr. BOREN, and Mr. MELCHER):

S. 1722. A bill to authorize the establishment of the National Museum of the American Indian, Heye Foundation within the Smithsonian Institution, and to establish a memorial to the American Indian, and for other purposes; to the Committee on Rules and Administration and the Select Committee on Indian Affairs, jointly, by unanimous consent.

By Mr. BINGAMAN (for himself and Mr. INOUYE):

S. 1723. A bill to authorize the establishment of certain regional exhibition facilities as part of the Musuem of the American Indian, and for other purposes; to the Select Committee on Indian Affairs.

SUBMISSION OF CONCURRENT AND SENATE RESOLUTIONS

The following concurrent resolutions and Senate resolutions were read, and referred (or acted upon), as indicated:

By Mr. FORD; from the Committee on Rules and Adminsitration:

S. Res. 288. An original resolution to permit amendments to bills implementing trade agreements under section 151(d) of the Trade Act of 1974 if such amendments relate to the domestic or foreign waterborne commerce of the United States; placed on the calendar.

By Mr. BYRD (for himself and Mr. WARNER):

S. Res. 289. A resolution establishing "Mining Awareness Week"; placed on the calendar.

STATEMENTS ON INTRODUCED BILLS AND JOINT RESOLUTIONS

By Mr. McCLURE (by request):

S. 1719. A bill to authorize the study of the transfer of the Southeastern Power Administration out of Federal ownership; referred to the Committee on Energy and Natural Resources.

AUTHORIZATION OF TRANSFER THE SOUTHEASTERN POWER ADMINISTRATION OUT OF FEDERAL OWNERSHIP

● Mr. McCLURE. Mr. President, today I am introducing by request of the Department of Energy a bill which would authorize the study of the transfer of the Southeastern Power Administration out of Federal ownership, management, or control. While I would note that there has in the past been little congressional support for the transfer of any of the lower 48 power marketing administrations out of Federal control—in fact, I have been and remain adamantly opposed to such transfers—the bill I am introducing by request today nevertheless represents part of the fiscal year 1988 budget request submitted by the administration.

Mr. President, I ask unanimous consent that the text of the bill along with the transmittal letter from the Department of Energy be printed in the RECORD.

There being no objection, the material was ordered to be printed in the RECORD, as follows:

S. 1719

Be it enacted by the Senate and House of Representatives of the United States of America in Congress assembled, That the executive branch may expend funds and prepare or evaluate studies designed to transfer out of Federal ownership, management or control, in whole or in part, the facilities and functions of the Southeastern Power Administration.

DEPARTMENT OF ENERGY,
Washington, DC, June 10, 1987.

Hon. GEORGE BUSH,
President of the Senate,
Washington, DC.

DEAR MR. PRESIDENT: Enclosed is proposed legislation to authorize a study of the costs and benefits of a potential transfer of the Southeastern Power Administration out of Federal ownership, management or control. The purpose of this study would be to provide a sound analytical basis that would allow the Congress and the Administration to conduct an informed dialogue on these issues.

BACKGROUND OF THE LEGISLATION

There are a number of good historical reasons why the Federal Government entered into the business of developing the Nation's hydroelectric resources. Yet now when growth in Federal programs over a period of time has strectched the management and financial capabilities of the Federal Government to the limit, we need to examine Federal responsibilities closely to determine where they can be reduced. We particularly need to revive those activities of a commercial nature that can be performed as easily by the private sector or at andther level of government. We believe that commercial operations like the Southeastern Power Administration (SEPA) can be managed as well by public or private entities that are closer and more responsive to the areas and customers that they serve.

Section 208 of the Urgent Supplemental Appropriations Act, 1986, (Pub. L. No. 99-349, § 208), prohibits the executive branch from using funds to prepare or review studies, or solicit or draft proposals on a transfer of the Federal power marketing administrations out of Federal ownership, management or control until specifically authorized by Congress. This ban necessitates the attached legislative proposal to allow investigation into the feasibility of a SEPA transfer.

The Administration understands clearly its responsibility to prove that there are sufficient benefits from such a transfer to warrant proceeding, particularly regarding the benefits to power consumers in the affected regions and taxpayers in general. We believe options can be identified that would substantial benefits to both of these groups, without causing significant increases in power rates. The purpose of the proposed study is to identify the range of options available for such a transfer and develop an analysis including identification of customer impacts, that will assist Congress and the Administration in arriving at a reasoned decision.

SEPA is one of the smaller power administrations, and has an installed capacity of 3,092 megawatts of power in ten states. SEPA is unique in that it owns no transmission lines. SEPA's size would simplify a thorough evaluation of the consequences of its sale.

In performing this study and preparing an evaluation, we will work closely with Congress and the people in the region served by SEPA. We will seek out proposals that protect area interests and the general taxpayer. We understand clearly that our proposaal must safisfy the public and Congress before there is any chance of acceptance.

The study proposed in this legislation would allow the transfer of SEPA to be examined in depth, but the legislation would not authorize a transfer. Once the study has been completed and evaluated, we intend to present the results to Congress along with the supporting analysis and comments from the public. Congress then would have an opportunity to assess in detail the merits of a transfer. No final action to divest SEPA will be taken without further Congressional review and action.

COST AND BUDGET DATA

Enactment of this legislation will result in a budget authority requirement by the Department of Energy in the amount of $200,000. This cost would not be charged to SEPA's customers. The Office of Management and Budget advises that the enactment of this legislation would be in accord with the President's program.

Sincerely,

J. MICHAEL FARRELL,
General Counsel.●

By Mr. ROCKEFELLER:

S. 1720. A bill to protect and enhance the natural, scenic, cultural, and recreational values of certain segments of the New, Gauley, Meadow, and Bluestone Rivers in West Virginia for the benefit of present and future generations, and for other purposes; to the Committee on Energy and Natural Resources.

WEST VIRGINIA NATIONAL INTEREST RIVER CONSERVATION ACT

● Mr. ROCKEFELLER. Mr. President, I am very pleased this morning to introduce legislation that will not only protect the magnificent rivers of southern West Virginia, but will give our State's tourism industry an enormous boost. Our bill will extend Federal protection to the Bluestone, Gauley, and Meadow Rivers. Similar legislation introduced by our colleague from West Virginia, Congressman NICK JOE RAHALL, has already passed the other body with overwhelming bipartisan support.

In 1978, when the New River was designated a national river, the legislation called for a study of the tributaries of the New. These studies, performed by the Park Service, determined that the Bluestone, Gauley, and Meadow were outstanding rivers in terms of their scenic, natural, recreational, and cultural values. The studies have generated much support and excitement in my State. As a result, I

ability of the Intelligence Committees to carry out their oversight of this vital area.

Recent experience has demonstrated that the current system has numerous flaws. This bill addresses them. It provides for written authorization of covert actions and prohibits retroactive authorizations. It requires the congressional oversight committees to be advised of all findings within 48 hours of their being signed, but permits such notice to be limited to the leadership of both Houses and the chairmen and vice-chairmen of the Intelligence Committees where the President deems such limited notice essential to protect vital U.S. interests. It provides that the Intelligence Committees be made aware of precisely who within Government and outside Government will be used to carry out covert actions, and it puts to rest the notion that the President may authorize, under the rubric of covert actions, activities which would violate the statutes of the United States.

I hope this bill will receive serious consideration, both by my colleagues in the Senate and on the Intelligence Committee and by those outside Congress with an interest in this subject. It represents a balanced, comprehensive approach to congressional oversight of intelligence activities, which, to my mind, would constitute a decided improvement over the current system.

In addition to the bill and a section-by-section analysis, I am submitting the letter the President sent to the Intelligence Committee which I referred to earlier, and I ask unanimous consent that this material be printed in the RECORD.

There being no objection, the material was ordered to be printed in the RECORD, as follows:

S. 1721

Be it enacted by the Senate and House of Representatives of the United States of America in Congress assembled, That this Act may be cited as the "Intelligence Oversight Act of 1987."

SECTION 1. Section 662 of the Foreign Assistance Act of 1961 (22 U.S.C. 2422) is hereby repealed.

SEC. 2. Section 501 of Title V of the National Security Act of 1947 (50 U.S.C. 413) is amended by striking the language contained therein, and substituting the following new sections:

"SEC. 501. GENERAL PROVISIONS.

(a) The President shall ensure that the Select Committee on Intelligence of the Senate and the Permanent Select Committee of the House of Representatives (hereinafter in this title referred to as the "intelligence committees") are kept fully and currently informed of the intelligence activities of the United States as required by this title. Such activities shall ordinarily be conducted pursuant to consultations between the President, or his representatives, and the intelligence committees, prior to the implementation of such activities, although nothing contained herein shall be construed as requiring the approval of the intelligence committees as a condition precedent to the initiation of such activities.

(b) The President shall ensure that any illegal intelligence activity or significant intelligence failure is reported to the intelligence committees, as well as any corrective action that has been taken or is planned in connection with such illegal activity or intelligence failure.

(c) The President and the intelligence committees shall each establish such procedures as may be necessary to carry out the provisions of this title.

(d) The House of Representatives and the Senate, in consultation with the Director of Central Intelligence, shall each establish, by rule or resolution of such House, procedures to protect from unauthorized disclosure all classified information and all information relating to intelligence sources and methods furnished to the intelligence committees or to Members of Congress under this section. In accordance with such procedures, each of the intelligence committees shall promptly call to the attention of its respective House, or to any appropriate committee or committees of its respective House, any matter relating to intelligence activities requiring the attention of such House or such committee or committees.

(e) Nothing in this Act shall be construed as authority to withhold information from the intelligence committees on the grounds that providing the information to the intelligence committees would constitute the unauthorized disclosure of classified information or information relating to intelligence sources and methods.

(f) As used in this section, the term "intelligence activities" includes, but is not limited to, "special activities," as defined in subsection 503(e), below.

SEC. 502. REPORTING INTELLIGENCE ACTIVITIES OTHER THAN SPECIAL ACTIVITIES.

The Director of Central Intelligence and the heads of all departments, agencies, and other entities of the United States Government involved in intelligence activities shall keep the intelligence committees fully and currently informed of all intelligence activities, other than special activities as defined in subsection 503(e), below, which are the responsibility of, are engaged in by, or are carried out for or on behalf of, any department, agency, or entity of the United States Government, including any significant anticipated intelligence activity; provided that such obligation shall be carried out with due regard for the protection of classified information relating to sensitive intelligence sources and methods. In satisfying this obligation, the Director of Central Intelligence and the heads of all departments and agencies and other entities of the United States Government in intelligence activities shall furnish the intelligence committees any information or material concerning intelligence activities other than special activities which is within their custody or control, and which is requested by either of the intelligence committees in order to carry out its authorized responsibilities.

SEC. 503. APPROVING AND REPORTING SPECIAL ACTIVITIES.

(a) The President may authorize the conduct of "special activities," as defined herein below, by departments, agencies, or entities of the United States Government when he determines such activities are necessary to support the foreign policy objectives of the United States and are important to the national security of the United States, which determination shall be set forth in a finding that shall meet each of the following conditions:

(1) Each finding shall be in writing, unless immediate action by the United States is required and time does not permit the preparation of a written finding, in which case a written record of the President's decision shall be contemporaneously made and shall be reduced to a written finding as soon as possible but in no event more than forty-eight (48) hours after the decision is made;

(2) A finding may not authorize or sanction special activities, or any aspect of such activities, which have already occurred;

(3) Each finding shall specify each and every department, agency, or entity of the United States Government authorized to fund or otherwise participate in any way in such activities; provided that any employee, contractor, or contract agent of a department, agency or entity other than the Central Intelligence Agency directed to participate in any way in a special activity shall be subject either to the policies and regulations of the Central Intelligence Agency, or to written policies or regulations adopted by such department, agency or entity, in consultation with the Director of Central Intelligence, to govern such participation;

(4) Each finding shall specify, in accordance with procedures to be established pursuant to subsection 501(c), any third party, including any foreign country, which is not an element of, contractor or contract agent of, the United States Government, or is not otherwise subject to U.S. Government policies and regulations, who it is contemplated will be used to fund or otherwise participate in any way in the special activity concerned; and

(5) A finding may not authorize any action that would be inconsistent with or contrary to any statute of the United States.

(b) The President, the Director of Central Intelligence and the heads of all departments, agencies, and entities of the United States Government authorized to fund or otherwise participate in any way in a special activity shall keep the intelligence committees fully and currently informed of all special activities which are the responsibility of, are engaged in by, or are carried out for or on behalf of, any department, agency, or entity of the United States Government. In satisfying this obligation, the intelligence committees shall be furnished any information or material concerning special activities which is in the possession, custody or control of any department, agency, or entity of the United States Government and which is requested by either of the intelligence committees in order to carry out its authorized responsibilities.

(c) The President shall ensure that any finding issued pursuant to subsection (a), above, shall be reported to the intelligence committees as soon as possible, but in no event later than forty-eight (48) hours after it has been signed; provided, however, that if the President determines it is essential to limit access to the finding to meet extraordinary circumstances affecting vital interests of the United States, such finding may be reported to the chairmen and ranking minority members of the intelligence committees, the Speaker and minority leader of the House of Representatives, and the majority and minority leaders of the Senate. In either case, a certified copy of the finding, signed by the President, shall be provided to the chairman of each intelligence committee. Where access to a finding is limited to the Members of Congress identified herein above, a statement of the reasons for limiting such access shall also be provided.

(d) The President shall promptly notify the intelligence committees, or, if applicable, the Members of Congress specified in subsection (c), above, of any significant change in any previously-approved special activity.

(e) As used in this section, the term "special activity" means any activity conducted in support of national foreign policy objectives abroad which is planned and executed so that the role of the United States Government is not apparent or acknowledged publicly, and functions in support of such activity, but which is not intended to influence United States political processes, public opinion, policies or media, and does not include activities to collect necessary intelligence, military operations conducted by the armed forces of the United States and subject to the War Powers Resolution (50 U.S.C. 1541-1548), diplomatic activities carried out by the Department of State or persons otherwise acting pursuant to the authority of the President, or activities of the Department of Justice or federal law enforcement agencies solely to provide assistance to the law enforcement authorities of foreign governments."

SEC. 3. Section 502 of Title V of the National Security Act of 1947 (50 U.S.C. 414) is redesignated as section 504 of such Act, and is amended by adding the following new subsection (d):

"(d) No funds appropriated for, or otherwise available to, any department, agency, or entity of the United States Government, may be expended, or may be directed to be expended, for any special activity, as defined in subsection 503(e), above, unless and until a Presidential finding required by subsection 503(a), above, has been signed or otherwise issued in accordance with that subsection."

SEC. 4. Section 503 of Title V of the National Security Act of 1947 (50 U.S.C. 415) is redesignated as section 505 of such Act.

SECTION-BY-SECTION ANALYSIS

SECTION 1. REPEAL OF HUGHES-RYAN AMENDMENT

Current statutory provisions for intelligence oversight include the general requirements to inform the House and Senate Intelligence Committees in Title V of the National Security Act of 1947, as amended in 1980, and the requirement of Presidential approval for CIA covert action in Section 662 of the Foreign Assistance Act of 1961, as amended (22 USC 2422—the Hughes-Ryan Amendment). The differences in language and scope between these provisions have been a source of unnecessary confusion. Therefore, Section 1 of the bill would repeal the Hughes-Ryan Amendment in order to substitute a new Presidential approval requirement as an integral part of a more coherent and comprehensive statutory oversight framework for covert action (or "special activities") and other intelligence activities. The superceding Presidential approval requirement is contained in the proposed new sections 503 and 504(d) of the National Security Act of 1947, discussed below.

This change is intended to bring current law more closely into line with Executive branch policy which requires Presidential approval for covert action by any component of the U.S. Government, not just by the CIA. Section 3.1 of Executive Order 12333, December 4, 1981, states, "The requirements of section 662 of the Foreign Assistance Act of 1961, as amended (22 USC 2422), and section 501 of the National Security Act of 1947, as amended (50 USC 413), shall apply to all special activities as defined in this Order." Replacing Hughes-Ryan with a comprehensive Presidential approval requirement for covert action (or "special activities") by any U.S. Government entity gives statutory force to a policy that has not been consistently followed in recent years.

SECTION 2. OVERSIGHT OF INTELLIGENCE ACTIVITIES

Section 2 of the bill would replace the existing Section 501 of the National Security Act of 1947 with three new sections that prescribe, respectively, general provisions for oversight of all intelligence activities, reporting of intelligence activities other than special activities, and approval and reporting of special activities. This revision of current law has three principal objectives.

The first is to clarify and emphasize the general responsibilities of the President to work with the Congress, through the House and Senate Intelligence Committees, to ensure that U.S intelligence activities are conducted in the national interest. Current law does not fully address the obligations of the President. Nor does the existing statute reflect the commitment to consultation with the Congress made by the President as a result of the lessons learned from the Iran-Contra inquiries.

The second objective is to eliminate unnecessary ambiguities in the law. Experience under the current statute has indicated significant areas where Congressional intent may be subject to misinterpretation by Executive branch officials, as well as gaps in the law where Congress did not adequately anticipate the need for statutory guidance. Examples are the uncertain meaning of the requirement to report "in a timely fashion," the absence of an explicit provision for written Presidential Findings, and the need to specify those responsible for implementing covert actions. The aim is to clarify the intent of Congress with respect to oversight of intelligence activities so as to reduce the possibilities for misunderstanding or evasion. For purposes of clarity, a distinction is made between the detailed provisions for special activities, which are instruments of U.S. foreign policy, and the requirements for other intelligence activities (i.e., collection, analysis, counterintelligence) that are less controversial.

A third objective is to provide statutory authority for the President to employ special activities to implement U.S. foreign policy by covert means. Congress has not previously done so, except to the extent that the CIA was authorized by the National Security Act of 1947 "to perform such other functions and duties related to intelligence affecting the national security as the National Security Council may from time to time direct." Current law requires Presidential approval and the reporting to Congress of "intelligence operations in foreign countries, other than activities intended solely for obtaining necessary intelligence." This does not provide affirmative statutory authority to employ covert means as a supplement to overt instruments of U.S. foreign policy. Nor does it specify what types of activity are intended to be covered by the legal requirements for covert action. This has called into question the legality of covert actions, such as arms transfers, undertaken as alternatives to overt programs with express statutory authority. Congress should expressly authorize covert action as a legitimate foreign policy instrument, subject to clearly defined approval and reporting requirements.

The overall purpose of this bill is to use the lessons of recent experience to establish a more effective statutory framework for executive-legislative cooperation in the field of intelligence. Such legislation is not a guarantee against conflicts between the branches or abuses of power. It can, however, help minimize such conflicts and abuses by emphasizing the mutual obligations of the President and Congress and by eliminating unnecessary legal ambiguities that invite misunderstanding on both sides.

SECTION 501. GENERAL PROVISIONS

The new Section 501 of Title V of the National Security Act of 1947 would specify the general responsibilities of the President and the Congress for oversight of intelligence activities.

(a) Presidential Duties and Prior Consultation

Subsection (a) would place a statutory obligation upon the President to ensure that the Senate Select Committee on Intelligence and the House Permanent Select Committee on Intelligence (referred to in the bill as the "intelligence committees") are kept fully and currently informed of the intelligence activities of the United States as required by this title. Current law imposes such duties on the DCI and agency heads, but not on the President himself. Overall responsibility should be vested in the President because of the importance and sensitivity of secret intelligence activities that may affect vital national interests and because the President may have unique knowledge of those activities that he is best suited to ensure is imparted to the intelligence committees. The terms and conditions for keeping the committees "fully and currently informed" are those set forth in Sections 502 and 503, discussed below.

In addition, subsection (a) would provide that U.S. intelligence activities shall ordinarily be conducted pursuant to consultations between the President, or his representatives, and the intelligence committees, prior to the implementation of such activities. This is consistent with the intentions of the President as stated in his letter of August 8, 1987, to the Chairman and Vice Chairman of the Senate Intelligence Committee. It applies to all U.S. intelligence activities, including collection, analysis, counterintelligence, and special activities. Additional Presidential reporting requirements for special activities are set forth in Section 503, discussed below. This new general provision for prior consultation with the intelligence committees would supplement current requirements for keeping the committees informed of "significant anticipated intelligence activities." The requirement for prior consultations is a more complete reflection of the need for executive-legislative cooperation in the formulation of intelligence policies. For example, the President or his representatives should ordinarily consult the intelligence committees on proposed Presidential Findings prior to their approval by the President.

Subsection (a) would also retain the qualification in current law that nothing contained in the prior consultation or prior notice requirements shall be construed as requiring the approval of the intelligence committees as a condition precedent to the initiation of such activities. The parallel provision of existing law is clause (A) of paragraph 501(a)(1).

(b) Illegal Activities and Significant Failures

Subsection (b) would require the President to ensure that any illegal intelligence activity or significant intelligence failure is reported to the intelligence committees, as well as any corrective action that has been taken or is planned in connection with such illegal activity or failure. Under current law, paragraph 501(a)(3) imposes this duty on the DCI and agency heads, subject to certain conditions. The purpose is to place an unqualified statutory obligation on the President to ensure reporting of such matters to the committees. The President should establish procedures for review within the Executive branch of intelligence activities that may have been illegal and for

reporting to the intelligence committees when a determination is made that there are reasonable grounds to believe that the activity was a violation of the Constitution, statutes, or Executive orders of the United States. The President should establish procedures for the reporting of activities determined to be significant intelligence failures. The current provision requires the reporting of an illegal activity or significant failure "in a timely fashion." This language is deleted because of its ambiguity. The intent is that the committees should be notified immediately whenever a determination is made under procedures established by the President in consultation with the intelligence committees.

Another difference from existing law is that the requirement to report illegal activities or significant failures would not be subject to the preambular clauses in the current subsection 501(a) which could be interpreted as qualifying the statutory obligation to inform the intelligence committees.

(c)-(f) Other General Provisions

Subsections (c) through (e) would retain provisions of existing law. Subsection (c) is identical to the current subsection 501(c) that authorizes the President and the intelligence committees to establish procedures to carry out their oversight obligations. Subsection (d) is the same as the current subsection 501(d) that requires the House and Senate to establish procedures to protect the secrecy of information furnished under this title and to ensure that each House and its appropriate committees are advised promptly of relevant information. Subsection (e) repeats the current subsection 501(e) which makes clear that information may not be withheld from the intelligence committees under this Act on the grounds that providing the information to the intelligence committees would be unauthorized disclosure of classified information or information relating to intelligence sources and methods.

Subsection (f) states that the term "intelligence activities," as used in this section, includes, but is not limited to, "special activities," as defined in subsection 503(e), discussed below.

SECTION 503. REPORTING INTELLIGENCE ACTIVITIES OTHER THAN SPECIAL ACTIVITIES

The new section 502 is intended to be substantially the same as the current requirements of subsections 502(a)(1) and (2) insofar as they apply to intelligence activities other than special activities. This distinction between special activities and other intelligence activities is discussed more fully with respect to section 503, below.

Fully and Currently Informed

Section 502 would require the Director of Central Intelligence (DCI) and the heads of all departments, agencies and other entities of the United States involved in intelligence activities to keep the intelligence committees fully and currently informed of all intelligence activities, other than special activities as defined in subsection 503(e), which are the responsibility of, are engaged in by, or are carried out for or on behalf of any department, agency, or entity of the United States, including any significant anticipated intelligence activity. The special procedure for prior notice to eight leaders in the current clause (B) of paragraph 501(a)(1) would be deleted, since it was intended to apply to special activities, to be governed by section 503, discussed below.

Section 502 also would provide that, in satisfying the obligation to keep the committees fully and currently informed, the DCI and the heads of all departments and agencies and other entities of the United States involved in intelligence activities shall furnish the intelligence committees any information or material concerning intelligence activities (other than special activities) which is within their custody or control, and which is requested by either of the intelligence committees in order to carry out its authorized responsibilities. This requirement is subject to the provision for protection of sensitive intelligence source and methods, discussed below.

Protection of Sensitive Sources and Methods

The obligation to keep the intelligence committees fully and currently informed under this section is to be carried out with due regard for the protection of classified information relating to sensitive intelligence sources and methods. This provision is similar to the second preambular clause in the current subsection 501(a) which imposes duties "to the extent consistent with due regard for the protection from unauthorized disclosure of classified information and information relating to intelligence sources and methods." The proposed new language more accurately reflects and is intended to have the same meaning as the legislative history of the similar preambular clause in existing law.

The first preambular clause in the current subsection 501(a) would be deleted. It imposes obligations "[t]o the extent consistent with all applicable authorities and duties, including those conferred upon the executive and legislative branches of the Government." This clause creates unnecessary ambiguity in the law, because it has been interpreted by some as Congressional acknowledgement of an undefined constitutional authority of the Executive branch to disregard the statutory obligations. Recent experience indicates that legislation qualifying its terms by reference to the President's constitutional authorities may leave doubt as to the will of Congress and thus invite evasion. Legitimate Executive branch concerns are adequately met by the provision for due regard for protection of sensitive intelligence sources and methods, discussed above

SECTION 503. APPROVING AND REPORTING SPECIAL ACTIVITIES

Special activities (or covert actions) raise fundamentally different policy issues from other U.S. intelligence activities because they are an instrument of foreign policy. Indeed, constitutional authorities draw a distinction between Congressional power to restrict the gathering of information, which may impair the President's ability to use diplomatic, military, and intelligence organizations as his "eyes and ears," and Congressional power to regulate covert action that goes beyond information gathering. There is little support for the view that such special activities are an exclusive Presidential function. Congress has the constitutional power to refuse to appropriate funds to carry out special activities and may impose conditions on the use of any funds appropriated for such purposes.

Under current law, however, the Congressional mandate is ambiguous, confusing and incomplete. There is no express statutory authorization for special activities; the requirement for Presidential approval of special activities applies only to the CIA; and Presidential approval procedures are not specified. There is a question whether Congress has intended that the President have authority to conduct special activities which are inconsistent with or contrary to other statutes. The statutory requirements for informing the intelligence committees of special activities are subject to misinterpretation, and the scope of activities covered by the law is undefined. This bill seeks to remedy these deficiencies so that covert actions are conducted with proper authorization in the national interest as determined by the elected representatives of the American people—the President and the Congress—through a process that protects necessary secrecy.

(a) Presidential Findings

Subsection (a) would provide statutory authority for the President to authorize the conduct of special activities by departments, agencies or entities of the United States when he determines such activities are necessary to support the foreign policy objectives of the United States and are important to the national security of the United States. This determination must be set forth in a "Finding" that meets certain conditions. The importance of this requirement is underscored by Section 3 of the bill, discussed later, which prohibits expenditure of funds for any special activity unless and until such a presidential Finding has been issued.

The current Presidential approval provision in the Hughes-Ryan Amendment (22 USC 2422) requires a finding by the President "that each such operation is important to the national security of the United States." The proposed new subsection 503(a) would require the President to make an additional determination that the activities "are necessary to support the foreign policy objectives of the United States." This conforms the statute to the Executive branch definition of "special activities" in section 3.4(h) of Executive Order 12333 which refers to "activities conducted in support of national foreign policy objectives abroad." The President should determine not only that the operation is important to national security, but also that it is consistent with and in furtherance of established U.S. foreign policy objectives.

In addition to reflecting these presidential determinations, Findings must meet five conditions. First, paragraph 503(a)(1) would require that each Finding be in writing, unless immediate action is required of the United States and time does not permit the preparation of a written Finding, in which case a written record of the President's decision would have to be contemporaneously made and reduced to a written Finding as soon as possible but in no event more than 48 hours after the decision is made. This requirement should prevent a President's subordinate from later claiming to have received oral authorization without further substantiation than the subordinate's undocumented assertion. It is also consistent with the President's current policy of requiring written Findings.

Second, paragraph 503(a)(2) would restate emphatically the current legal ban on retroactive Findings. It would provide that a Finding may not authorize or sanction special activities, or any aspects of such activities, which have already occurred. This is also consistent with the President's current policy.

Third, paragraph 503(a)(3) would require that each Finding specify each and every department, agency, or entity of the United States Government authorized to fund or otherwise participate in any way in the special activities authorized in the Finding. This requirement is consistent with section 1.8(e) of Executive Order 12333 which states that no agency except the CIA in peacetime may conduct any special activity "unless the President determines that another agency is more likely to achieve a particular objective."

Fourth, paragraph 503(a)(4) would require that each Finding specify, in accordance with procedures to be established, any third

party, including any third country, which is not an element of, contractor of, or contract agent of the U.S. Government, or is not otherwise subject to U.S. Government policies and regulations, whom it is contemplated will be used to fund or otherwise participate in any way in the special activity concerned. The purpose is to require the President's approval and notice to the intelligence committees when third countries, or private parties outside normal U.S. government controls, are used to help implement a covert action operation. The intent is that procedures be established in consultation with the intelligence committees to determine when the involvement of a third party constitutes use "to fund or otherwise participate" in a special activity and to determine when a private party is not "subject to U.S. Government policies and regulations."

Fifth, paragraph 503(a)(5) would establish that a Finding may not authorize any action that would be inconsistent with or contrary to any statute of the United States. This is similar to section 2.8 of Executive Order 12333, which states that nothing in that Order "shall be construed to authorize any activity in violation of the Constitution or statutes of the United States." Current CIA policy is to conform its operations to any federal statutes which apply to special activities, either directly or as laws of general application. This provision is not intended to require that special activities authorized in Presidential Findings comply with statutory limitations which, by their terms, apply only to another U.S. Government program or activity. For example, a statutory restriction on the overt Defense Department arms transfer program would not apply to covert CIA arms transfers authorized in a Finding, even if the CIA obtained the arms from the Defense Department under the Economy Act. When the Congressional concerns that led to the restriction on the Defense Department program are relevant to the similar covert CIA activity, those factors should be taken into account by the intelligence committees.

(b) Fully and Currently Informed

Subsection 503(b) would place a statutory obligation on Executive branch officials to keep the intelligence committees fully and currently informed of special activities and furnish the intelligence committees any information or material concerning special activities which they possess and which is requested by either of the intelligence committees in order to carry out its authorized responsibilities. This subsection differs in four respects from the parallel provisions of Section 502 that apply to other intelligence activities.

The first difference is that the obligation would be placed on the President, as well as on the DCI and the heads of departments, agencies, and entities of the U.S. Government. The President may have unique information concerning a special activity that should be imparted to the committees.

The second difference is that the obligation would be placed on the heads of departments, agencies, and entities of the U.S. Government "authorized to fund or otherwise participate in a special activity"—rather than just those directly involved in the activity. This conforms to the terms of the presidential Finding requirement in subsection 503(a)(3).

The third difference is that the requirement to inform the committees of "any significant anticipated intelligence activity" would be deleted. In the case of special activities, that requirement would be superceded by the requirements in subsections 503(c) and (d), discussed below, for reporting presidential Findings and significant changes in special activities, as well as by the general provision in subsection 501(a) for prior consultations with the intelligence committees.

The fourth difference is that the obligation to inform the committees would not be subject to a general proviso that such obligation shall be carried out with due regard for the protection of classified information relating to sensitive intelligence sources and methods. Instead, a specific statutory procedure would be established in subsection 503(c) for limiting the number of Members of Congress to whom information would be imparted in exceptionally sensitive cases. Moreover, sensitive sources and methods would also be protected under the procedures established by the President and the intelligence committees pursuant to subsection 501(c) and by the House of Representatives and the Senate pursuant to subsection 501(d).

(c) Notice of Findings

Subsection 503(c) would require the President to ensure that any Findings issued pursuant to subsection (a), above, shall be reported to the intelligence committees as soon as possible, but in no event later than 48 hours after it has been signed. If, however, the President determines it is essential to limit access to the Finding to meet extraordinary circumstances affecting vital interests of the United States, such Finding may be reported to 8 Members of Congress—the chairman and ranking minority members of the intelligence committees, the Speaker and minority leader of the House of Representatives, and the majority and minority leaders of the Senate. This procedure is similar to the existing provision in clause (B) of the current paragraph 501(a)(1) for limiting prior notice of "significant anticipated intelligence activities" to the same 8 congressional leaders.

The principal differences from existing law are the elimination of the preambular clauses in the current subsection 501(a) that qualify clause (1)(b) and the delection of the separate provision in the current subsection 501(b) for "timely" notice when prior notice is not given. These current provisions have created confusion because they appear, on the one hand, to require notice of Findings to at least the 8 leaders while, on the other hand, leaving open the possibility of postponement of notice until some time after a Finding is implemented. The proposed new subsection 503(c) changes the point of reference in the law from notice prior to the initiation of an activity to the more logical point of notice immediately upon the issuance of a Finding.

Subsection 503(b) would also require that in all cases a certified copy of the Finding signed by the President shall be provided to the chairman of each intelligence committee and that, if access is limited, a statement of the reasons for limiting access to the Finding concerned shall accompany the copy of the Finding.

(d) Notice of Significant Changes

Subsection 503(d) would require the President to ensure that the intelligence committees, or, if applicable, the 8 leaders specified in subsection (c), are promptly notified of any significant change in any previously-approved special activity. The intent is that such changes should be reported insofar as practicable prior to their implementation, in accordance with procedures agreed upon by the intelligence committees and the President. Such procedures currently exist in the form of agreements entered into between the DCI and the Chairman and Vice Chairman of the Senate Intelligence Committee in 1984 and 1986. Any change in the actual terms and conditions of a Finding would have to be reported in accordance with subsection 503(c).

(e) Definition of "Special Activities"

Section 503(e) sets forth a definition of the term "special activities". Not heretofore used or defined in statute, the term has nevertheless been used since 1978 in two Executive orders as a euphemism for the more colloquial term "covert actions". The term is adopted here not only because of its previous use within the Executive branch but as a more appropriate designation of such activity by the United States.

As stated, the definition of "special activities" set forth in section 503(e) is based upon the definition of the term now set forth in section 3.4(h) of Executive order 12333, issued by President Reagan on December 4, 1981. Indeed, the first and principal clause of the definition is taken verbatim from the definition in the Executive order. The exclusionary clauses, exempting certain activities from the scope of the definition, are for the most part modifications of, or additions to, the exclusions contained in the Executive order definition.

As defined in section 503(e), a "special activity" is any activity conducted in support of national foreign policy objectives abroad which is planned and executed so that the role of the United States Government is not apparent or acknowledged publicly, and functions in support of such activity. The definition covers all covert activities undertaken by the United States to support its foreign policy objectives towards other countries regardless of the department, agency, or element of the United States Government used to carry out such activities. While it applies to those activities conducted in support of national foreign policy objectives abroad, the term encompasses those activities conducted by the United States Government within the territory of the United States, so long as they are intended to support U.S. objectives abroad. The definition applies only to activities in which the role of the U.S. Government is not apparent or acknowledged to the public. Thus, activities of the United States Government conducted in support of national foreign policy objectives which are made known to the public, or which would be made known to the public or press if the Government were asked, are not covered by the definition.

The definition also makes clear that special activities shall not be intended to influence U.S. political processes, public opinion, policies or media. The purpose of this language is to preclude the use of the authority contained in this bill to plan or execute special activities for the purpose of influencing U.S. public opinion. While it is recognized that some special activities may occasionally have an indirect effect on U.S. public opinion, no such activity may be instituted for this purpose, and to the extent such indirect effect can be minimized in the planning and execution of special activities, it should be done. This portion of the definition reiterates what has been longstanding policy and practice within the Executive branch.

The definition further specifies four broad areas of activity undertaken by the United States Government in support of foreign policy objectives which are not included within the definition of special activities even if planned and conducted so that the role of the United States Government is not apparent or acknowledged publicly. These include activities to collect necessary intelligence, military operations conducted by the armed forces of the United States and subject to the War Powers Resolution (50 U.S.C. 1541-1548), diplomatic ac-

tivities carried out by the Department of State or persons otherwise acting pursuant to the authority of the President, or activities of the Department of Justice or federal law enforcement agencies solely to provide assistance to the law enforcement authorities of foreign governments. An explanation of each of these exclusions follows.

The exclusion of U.S. activities to collect necessary intelligence is intended to cover all activities of the United States Government undertaken for the purpose of obtaining intelligence necessary for the national security of the United States. While such activities clearly require oversight by the Congress, they are excluded from the definition of "special activities", inasmuch as they are subject to separate authorization and oversight, and often do not require specific approval by the President. This exclusion reiterates the longstanding policy contained in the Hughes-Ryan amendment (24 U.S.C. 2422) (1974) and in subsequent Executive orders.

The exclusion of military operations conducted by the armed forces of the United States and subject to the War Powers Resolution (50 U.S.C. 1541-1548) is new, appearing in neither statute or Executive order heretofore. The purpose of this exclusion is to clarify a problem of interpretation namely, when is a military operation undertaken by the United States reportable as a "special activity" or covert action? The definition sets forth a clear dividing line: if the military operation concerned is carried out covertly by U.S. military forces and it is not required to be reported to the Congress under the War Powers Resolution, then it is a "special activity" which is reportable to the intelligence committees under this statute. The exclusion would not apply to covert assistance given by the United States to the military forces, or to support the military operations, of a third party, either governmental or to private entities.

The third area excluded from the definition of special activities is diplomatic activities carried out by the Department of State or persons otherwise acting pursuant to the authority of the President. This represents a modification of the comparable exclusion in Executive order 12333. Although most diplomatic activities of the United States are publicly acknowledged, it is recognized that there are many diplomatic contacts and deliberations which are necessarily secret. The definition of special activities excludes these activities so long as they are undertaken by the Department of State, or by persons—either government officials or private citizens—who are acting pursuant to the authority of the President. It would not exclude diplomatic activities which are carried out by persons who are not employees of the Department of State—either governmental or private—whose authority to carry out such activities on behalf of the United States is not already established by law or Executive branch policy.

The fourth and final area excluded from the definition of special activities are activities of the Department of Justice or federal law enforcement agencies solely to provide assistance to law enforcement authorities of foreign governments. This exclusion is also new, reflected neither in law nor Executive order heretofore. Its incorporation here is intended to clarify a problem of interpretation which has existed under the current framework, namely, do law enforcement activities undertaken covertly by U.S. Government agencies outside the United States qualify as special activities? The formulation contained in the proposed definition would exclude assistance provided covertly to third countries by U.S. law enforcement agencies. It would not exclude law enforcement activities actually carried out covertly and unilaterally by such agencies outside the United States. It would also not exclude either assistance to law enforcement agencies of third countries, or carrying out law enforcement activities outside the United States, by elements of the U.S. Government which do not have law-enforcement functions.

SECTION 3. LIMITATION ON USE OF FUNDS FOR SPECIAL ACTIVITIES

Section 3 of the bill redesignates section 502 of the National Security Act of 1947, which concerns the funding of intelligence activities, as section 504 of the Act and adds a new subsection (d) which deals with the use of funds for special activities.

This provision is intended to carry forward and expand the limitation currently contained in 22 U.S.C. 2422 (the Hughes-Ryan Amendment), which would be repealed by Section 1 of the bill. The Hughes-Ryan amendment restricts the use of funds appropriated to CIA to carry out actions outside the United States "other than the collection of necessary intelligence", unless and until the President had determined that such actions were important to the national security.

Section 504(d) would similarly provide that appropriated funds could not be expended for special activities until the President had signed, or otherwise approved, a Finding authorizing such activities, but it would expand this limitation to cover the funds appropriated for any department, agency, or entity of the Government, not solely CIA. It would also cover non-appropriated funds which are available to such elements from any source, over which the agency involved exercises control. These might include funds offered or provided by third parties, funds produced as a result of intelligence activities (i.e. proprietaries), or funds originally appropriated for an agency other than the agency who wishes to expend the funds. The limitation contained in section 504(d) would also apply whether or not the agency concerned actually came into possession of the funds at issue. So long as the agency concerned had the ability to direct such funds be expended by third parties—governmental or private—it could not do so until a presidential Finding had been signed, or otherwise approved, in accordance with the requirements of section 503(a).

SECTION 4. REDESIGNATION OF SECTION 503 OF NATIONAL SECURITY ACT OF 1947

Section 4 redesignates section 503 of the National Security Act of 1947 as section 505, to conform to the changes made by the bill.

TEXT OF THE PRESIDENT'S LETTER ON NEW GUIDELINES FOR COVERT OPERATIONS

Hon. DAVID L. BOREN,
Chairman, Senate Select Committee on Intelligence, U.S. Senate, Washington, DC.
cc: The Honorable Louis Stokes and the Honorable Henry J. Hyde.

DEAR CHAIRMAN BOREN: In my March 31, 1987, message to Congress, I reported on those steps I had taken and intended to take to implement the recommendations of the President's Special Review Board. These included a comprehensive review of executive branch procedures concerning Presidential approval and notification to Congress of covert-action programs—or so-called special activities.

In my message, I noted that the reforms and changes I had made and would make "are evidence of my determination to return to proper procedures including consultation with the Congress."

In this regard, Frank Carlucci has presented to me the suggestions developed by the Senate Select Committee on Intelligence for improving these procedures. I welcome these constructive suggestions for the development of a more positive partnership between the intelligence committees and the executive branch.

Greater cooperation in this critical area will be of substantial benefit to our country, and I pledge to work with you and the members of the two committees to achieve it. We all benefit when we have an opportunity to confer in advance about important decisions affecting our national security.

Specifically, I want to express my support for the following key concepts recommended by the committee:

1. Except in cases of extreme emergency, all national security "findings" should be in writing. If an oral directive is necessary, a record should be made contemporaneously and the finding reduced to writing and signed by the President as soon as possible, but in no event more than two working days thereafter. All findings will be made available to members of the National Security Council (N.S.C.).

2. No Finding should retroactively authorize or sanction a special activity.

3. If the President directs any agency or persons outside of the C.I.A. or traditional intelligence agencies to conduct a special activity, all applicable procedures for approval of a finding and notification to Congress shall apply to such agency or persons.

4. The intelligence committees should be appropriately informed of participation of any Government agencies, private parties, or other countries involved in assisting with special activities.

5. There should be a regular and periodic review of all ongoing special activities both by the intelligence committees and by the N.S.C. This review should be made to determine whether each such activity is continuing to serve the purpose for which it was instituted. Findings should terminate or "sunset" at periodic intervals unless the President, by appropriate action, continues them in force.

6. I believe we cannot conduct an effective program of special activities without the cooperation and support of Congress. Effective consultation with the intelligence committees is essential, and I am determined to ensure that these committees can discharge their statutory responsibilities in this area. In all but the most exceptional circumstances, timely notification to Congress under Section 501(b) of the National Security Act of 1947, as amended, will not be delayed beyond two working days of the initial, of a special activity. While I believe that the current statutory framework is adequate, new executive branch procedures nevertheless are desirable to ensure that the spirit of the law is fully implemented. Accordingly, I have directed my staff to draft for my signature executive documents to implement appropriately the principles set forth in this letter.

While the President must retain the flexibility as Commander in Chief and chief executive to exercise those constitutional authorities necessary to safeguard the nation and its citizens, maximum consultation and notification is and will be the firm policy of this Administration.

Sincerely,

RONALD REAGAN.●

● Mr. BENTSEN. Mr. President, I am pleased today to join my colleagues in introducing the "Intelligence Oversight Act of 1987." This legislation continues the pattern of statutory strengthening of the intelligence oversight process that was established 40

years ago by the National Security Act of 1947. In the ensuing years, Congress has enacted other legislation in this area, including most recently the Foreign Intelligence Surveillance Act of 1978, the Intelligence Oversight Act of 1980, and the Intelligence Identities Protection Act of 1982. Each of these pieces of legislation responded to a requirement that was identified at the time, ranging from the need to strengthen our counterintelligence capabilities in the first instance to a life-and-death situation where CIA agents' identities were being publicly revealed in the past. The legislation we are introducing today, too, grows out of our own recent experience.

One of the lessons that we learned during the investigation of the Iranian arms sales and diversion of profits to the Contras is that current oversight statutes, particularly in the area of covert action reporting, are simply not specific enough. Indeed, it had become obvious during the preliminary investigation conducted by the Select Committee on Intelligence late last year that there were gaps and loopholes in our oversight laws and that there were some individuals within the executive branch who exploited these loopholes as a means of avoiding congressional notification of a covert operation.

To be specific, there is currently a statutory requirement that the oversight committees of Congress be notified in advance of covert actions, or must be notified "in a timely fashion" after the fact. This loophole of "timely fashion" was broad enough to allow the administration not to report the Iranian arms sales for some 18 months. I doubt they would have reported them even then, except that a small newspaper in the Middle East broke the story in November of last year.

The legislation that we are introducing today closes that loophole by requiring that the President provide written notification to the Oversight Committees of the Congress within for 48 hours after he has authorized a covert action. If he believes that the action is too sensitive to reveal to the entire membership of the Intelligence Committees, he would be authorized to limit notification to the chairmen and ranking members of those committees, the majority and minority leaders of the Senate and the Speaker and minority leader of the House. Notification of these eight individuals would insure that we do not have another situation where our country is embarked on a course of action with potentially grave foreign policy implications without notifying the Congress that such was about to be done.

Unlike present law, which does not require Presidential approval for covert activities conducted by agencies other than the CIA, this legislation spells out for the first time that the President must personally approve each covert action or "special activity," as they are sometimes called. So that there will be no doubt as to what the President has authorized and when he authorized it, our legislation requires that a Presidential finding be in writing and that a copy of each finding must be transmitted to the Intelligence Committees within 48 hours after it is signed. Retroactive findings such as were used in the Iran arms sales would be prohibited.

In other sections, this legislation would spell out for the first time the statutory power of the President to authorize covert actions. It also provides that no finding which authorizes a covert action can operate contrary to statute and that no funds can be used for a covert action unless there is a finding. Taken together, it seems to me that these requirements represent a reasonable approach to the problem of regaining control over covert actions, while at the same time not in any way harming or endangering our Nation's ability to conduct such operations.

Mr. President, I would like to close this statement on a more personal note. I have been a member of the Select Committee on Intelligence for almost 7 years now. In time of service on the committee I am the senior member on the Democratic side. During these years it has been my privilege to have had weekly, and sometimes almost daily, contact with the men and women of our Nation's intelligence services. The work that they do for our country is absolutely invaluable, and many of them routinely put their lives on the line with little or no public recognition.

Indeed, when public recognition does occur, it can sometimes mean death, as in the case of William Buckley who was CIA station chief in Beirut. Buckley was taken hostage, tortured, and killed because of what he was doing for his country—our country. There are similar men and women all over the world doing their jobs in silence and without public praise. In the lobby of the CIA headquarters building in Langley, VA, there are rows of gold stars carved into the wall. Each of those stars represents a CIA employee who was killed serving his country. Beneath the stars is a display case in which has been placed an open book. There are names in the book representing most of the stars on the wall, but there are blank lines as well, for some of these CIA employees still cannot be publicly identified, even 35 years later.

Mr. President, I end with these sentiments because I want to make it clear that in sponsoring this legislation today, I am not aiming it at the men and women of the intelligence community. I am not criticizing them for the job they do for us each and every day. No, I am not introducing this legislation as a way of strengthening the oversight process, continuing the pattern of the past 40 years, and making our Nation's partnership between the legislative and executive branches in this area a stronger and even more productive one.●

Mr. MURKOWSKI. Mr. President, events of recent months have highlighted the importance of congressional oversight of intelligence activities. The oversight function, performed by the two Select Intelligence Committees—one in the House and one in the Senate—is the means by which this democracy reconciles the people's right to know with the intelligence agencies need for secrecy.

Under existing law the intelligence agencies are obliged to keep the two communities currently informed of significant intelligence activities, including covert action. However, ambiguities inherent in existing statutes were dramatically highlighted during the recently concluded congressional investigation of the Iran-Contra affair. It is important that these ambiguities are eliminated so that the ground rules are clearly understood in both the Executive and the Congress and the temptation to look for loopholes is reduced.

As an outgrowth of painstaking negotiations on these issues between the staffs of the Senate Intelligence Community and the National Security Council, the committee sent a letter to the President's National Security Adviser. The legislation closely follows the provisions contained in that letter.

This bill does not impose new and more onerous burdens upon the intelligence agencies. Rather, it clarifies and rationalizes existing law. For example, this bill will, for the first time, explicitly empower the President to authorize covert actions and establish a Presidential "finding" as the authorizing document.

I am pleased to join with my distinguished colleague from Maine, the vice chairman of the Senate Select Committee on Intelligence, in cosponsoring this legislation.

By Mr. INOUYE (for himself, Mr. EVANS, Mr. BYRD, Mr. CRANSTON, Mr. SIMPSON, Mr. DECONCINI, Mr. BURDICK, Mr. DASCHLE, Mr. MURKOWSKI, Mr. MCCAIN, Mr. BINGAMAN, Mr. BOSCHWITZ, Mr. COCHRAN, Mr. CONRAD, Mr. DOMENICI, Mr. GORE, Mr. GRAMM, Mr. LEVIN, Mr. MATSUNAGA, Mr. PELL, Mr. REID, Mr. RIEGLE, Mr. ROCKEFELLER, Mr. RUDMAN, Mr. STAFFORD, Mr. SANFORD, Mr. SIMON, Mr. WIRTH, Mr. BOREN, and Mr. MELCHER):

S. 1722. A bill to authorize the establishment of the National Museum of the American Indian, Heye Foundation within the Smithsonian Institution, and to establish a memorial to the American Indians, and for other purposes; by unanimous consent, referred jointly to the Committee on Rules and Administration and the Select Committee on Indian Affairs.

the market. To date, the Agency has thoroughly reviewed only a handful of those chemicals, a sorry record indeed. Congress has to shoulder some of the responsibility, though; we have not given the Agency sufficient resources to do the job.

We have the opportunity to right some of these wrongs in this Congress. My good friend from Indiana, Senator LUGAR, and I have introduced a comprehensive bill to reform our pesticide laws. Senator DURENBERGER and I have introduced a bill to prevent contamination of our ground water resources. These issues have dragged on for far too long; reform is long overdue. I want to send a bill to the President, and when farm credit is settled, I want the committee to take up FIFRA.

On this anniversary of the publication of "Silent Spring," a book widely credited with inspiring the environmental movement, I want to say again that pesticide reform is at the top of my agenda. I urge other Senators to give it priority as well.●

NEW YORK BIGHT RESTORATION ACT OF 1987

● Mr. D'AMATO. Mr. President, I am pleased to rise today as an original cosponsor of the New York Bight Restoration Act of 1987, S. 1714, which was the result of the combined efforts of my distinguished colleagues, Senators MOYNIHAN, LAUTENBERG, and BRADLEY. This legislation will require the Environmental Protection Agency to take a closer look at the dumping practices which have caused the deterioration of the bight area. It is essential that we identify the sources of these pollutants, determine the effects that they have upon our water, and develop a plan to clean up the bight area.

I strongly believe that a study of the entire bight area is long overdue. As referred in the list of sponsors, this is an issue transcending State lines. The pollution is not just in one concentrated area of the bight, it is widespread throughout the entire area. It is imperative that we discover the sources of the garbage and pollution that are relentlessly bombarding our beaches. New York's beaches have long been treasured by the thousands of citizens who flock to its shores all year round.

The pollutants that have been washing ashore pose hazards not only to bathers, but to the marine life in the water. This summer has witnessed a rash of fish kills along Long Island's beaches and along the Jersey shore.

How much longer can New York's beaches survive under the effects of tons of raw sewage and countless other contaminants dumped into our waters every year? The dumping of several billion gallons of raw sewage and more than 7 million wet metric tons of dredged material into the bight every year must be stopped. We must find alternative methods of disposing of this waste. We must act now to restore the bight area before it is too late.

On June 23 of this year, local health officials in Nassau County, NY, were forced to close down the shorefront at East Atlantic Beach due to garbage that washed ashore. The refuse was identified as hospital waste and included blood vials, surgical tubing, and discarded syringes with needles attached. Again, on June 24, a total of 10 beaches in Hempstead Harbor were closed after the waste treatment plant serving the village of Roslyn began dumping untreated sewage into the harbor at the alarming rate of 5,000 gallons per hour. The affected areas extended the length of the harbor from Bar Beach to the privately owned IBM Beach on the west shore and from Tapan Beach to Morgan Park Beach on the eastern shore of the Harbor. Can we allow our children to swim in waters that contain this kind of pollution?

This legislation, which amends the Marine Protection, Research, and Sanctuaries Act of 1972, requires EPA to conduct a study to determine what is currently being dumped into the bight area; learn what effect this material has on the bight area; and find alternate means for handling material that results in continued degradation of the bight. EPA must also set standards for some of the more common hazardous pollutants that are destroying the bight, such as heavy metals and PCB's.

We need to take a serious look at the pollution of our waters. It is a shame to watch this natural resource deteriorate before our very eyes. I call upon my colleagues to act upon this legislation. Our water is too precious a resource to let go to waste.●

CONGRESSIONAL OVERSIGHT OF INTELLIGENCE ACTIVITIES

● Mr. DECONCINI. Mr. President, I am pleased to join my colleagues in sponsoring the Intelligence Oversight Act of 1987 which, through strengthening and clarifying provisions, amends the National Security Act of 1947.

Since last November, when the Nation was stunned to learn that the United States had, in direct contravention to official policy, secretly sold arms to the regime of the Ayatollah Khomeini and that profits from those sales had been turned over to the Contras, it has been evident that the process under which intelligence activities are conducted was weak, confused, and inadequate.

In response to those startling revelations, the Senate Select Committee held hearings, which were followed by the hearings of the Special Iran-Contra Committee. These investigations revealed that a small group of people, under the direction of the National Security Council, secretly devised and directed major foreign policy initiatives, which included activities of questionable legality and resulted in severely damaging the national interest.

As rationale, the committees repeatedly heard that congressional intent pertaining to the conduct of activities such as these was unclear. This legislation is offered to eliminate any such ambiguity. It addresses the shortcomings of the current process, and results from the thorough examination of congressional oversight of these matters undertaken by the Senate Intelligence Committee during the last several months.

I want to make clear that this legislation would in no way compromise the President's ability to rely on the intelligence community to gather the information he needs to establish foreign policy. But it does assign to the President the responsibility to make certain that consultations between the intelligence committees and him, or his representatives, occur before the initiation of any intelligence activity. Through these prior consultations with the intelligence committees, increased cooperation between the Congress and the executive branch, as these two branches of Government formulate intelligence policy, should result.

This bill also mandates specific conditions to be met by the President in the planning and execution of special activities—covert actions: Only the President could authorize a special activity; such authority must be set forth in a written finding, which cannot be retroactive, and which must enumerate every Government entity and/or third party which will participate in that activity. Furthermore, no special activity could be undertaken which violated the laws of the United States.

This legislation would also place responsibility for congressional notification with the President, who must, as soon as possible, and no later than 48 hours after he has signed the finding, ensure that the intelligence committees are notified of the special activity. Should the President determine extraordinary circumstances prevail at the time the finding is made, then notification would be required of only eight Members of Congress, the chairmen and vice chairmen of the two intelligence committees, the Speaker and minority leader of the House of Representatives and the majority and minority leaders of the Senate. The appropriate Members of Congress must also be notified if the special activity is changed in any significant way.

Mr. President, this bill, through the establishment of a strong and unambiguous statute, would protect the national interest and enhance our democratic process by making certain that those elected to serve their country, the President and the Congress, have clearly defined roles in the evolution

and execution of our Nation's intelligence activities.

Mr. President, I ask unanimous consent that this statement be inserted in the RECORD at the appropriate place.●

GOVERNOR DUKAKIS' VISION OF NATIONAL SECURITY

● Mr. KERRY. Mr. President, as the Nation faces the 1988 Presidential election, one essential goal must be to develop a coherent alternative vision of national security to the one pursued by President Reagan over the past 6½ years.

The administration has too often equated spending money on weapons with national security, even as it has demonstrated managerial incompetence in weapons purchasing and disregard for the law and international institutions in its foreign policy.

Today, Gov. Michael Dukakis delivered a speech at Georgetown University in which he declared his vision of the real elements of national security.

Instead of rhetoric about decades of neglect and evil empires, Governor Dukakis offered a pragmatic approach for the coming decade—an approach of stabilized defense spending, arms control on offensive and defensive strategic systems, a halt to nuclear testing and antisatellite weapons development, and the willingness to do what is necessary to make sure that no adversary doubt U.S. resolve to defend itself or its allies in a conventional conflict.

In this thoughtful speech, Governor Dukakis talked about risk reduction, coping with terrorism, halting nuclear proliferation, reinforcing conventional defense, protecting our sealanes, controlling Third World arms purchases, making international institutions work for the United States, rather than against it, as among his national security goals.

It's refreshing to hear a Presidential candidate provide a tough, but pragmatic approach to these issues. I believe Governor Dukakis' approach provides a firm foundation for the Nation as it faces the 1988 election and urge my colleagues to take the opportunity to take a look at it now as we begin to consider the direction our Nation shall take for the future.

I ask that the text of Governor Dukakis' speech be inserted in the RECORD.

The speech follows:

THE ELEMENTS OF OUR NATIONAL SECURITY

(Governor Michael S. Dukakis)

I am an internationalist.

I believe that we must be tough and strong and involved—in our relations with the Soviet Union; in Europe and in our own hemisphere; in the Middle East and the Far East; in the struggle against apartheid in South Africa; and in the world economy.

Of course, it's easy to talk about being tough and strong and involved. We've been getting that kind of rhetoric from the White House for nearly seven years.

But it's another thing to be tough; to be strong; and to use our strength for the right reasons and the right goals.

During the next weeks and months, I will be setting forth my vision of America's place in the world; my views on our relations with the Soviet Union; on how we build a competitive America; on how we promote democracy and human rights around the globe.

It is an optimistic vision. A vision of an America that is proud and strong and confident; that respects the rule of law; that works in concert with our allies and friends; and that pursues a foreign policy that gives life to the principles and values upon which our nation was founded.

This afternoon, I want to apply this vision to a specific challenge: the national security of the United States.

From the day it took office, the current Administration has equated defense spending—especially on nuclear weapons—with national security.

Almost two trillion dollars later, the nuclear balance of terror is unchanged. NATO forces remain inadequate to the task of defending Europe without early resort to nuclear weapons. There are serious weaknesses in our conventional capability. We have gone from being the largest creditor nation to the largest debtor nation on earth. The defense budget has become a bitter partisan issue. And the choices that will be available to the next President of the United States will be sharply constrained.

The next President must, at the very least, stabilize defense spending. He will have no other choice. We do not have the resources to continue throwing money at the Pentagon. And we have important obligations, as well—to compensate fairly the men and women of our armed forces; to strengthen our conventional capabilities; and to meet our commitments around the globe.

We may be able to make significant cuts below current levels of defense spending—if negotiations with the Soviet Union go well. But that will not happen overnight. And we should not assume—or promise—that it will.

The next President, like all modern Presidents, will be required to respond to grave international risks—important diplomatic opportunities—and critical security questions.

How can we reduce the risk of nuclear war?

How can we improve the ability of our conventional forces to respond to threats, and to secure our vital interests, quickly and successfully around the globe?

How do we cope with terrorism?

How do we manage the Defense Department in a way that reflects the common sense and protects the pocketbooks of the American people?

How do we restore professionalism and accountability and integrity to the national security planning process of our country?

How do we use our strength in a way that not only protects our interests, but promotes human rights, encourages democratic values and fosters economic opportunity around the world?

The answer to these questions begins with some very good news.

The news that the United States and the Soviet Union have agreed, in principle, to eliminate short and medium range missiles from Europe. I strongly support this agreement. And I hope the verification issues will be carefully and promptly resolved and that the Senate will consent to ratification of the new treaty.

The INF Treaty is important not because of the number or type of weapons involved. The superpowers have deployed twice as many warheads since 1981 as will be destroyed under this agreement.

The treaty is important because it will set the stage for the next President of the United States to negotiate deep cuts in strategic weapons and for a comprehensive test ban treaty—in short, to reduce the risk of nuclear war.

What do I mean by that? How did we get where we are today?

It has been forty-two years since the *Enola Gay* dropped a 13 kiloton bomb on Hiroshima, ending a long and brutal war, and revolutionizing the way we thought about our security.

For a time, we held a monopoly on nuclear weapons, and made them the backbone of our defense. To contain the massive Soviet armies that were in the process of stifling the right of self-determination throughout half of Europe, we had no choice.

But as the Soviet nuclear program developed, and their arsenal came to match our own, the strategic rationale for building yet more nuclear weapons grew weaker as the stockpiles on both sides grew higher.

This was clear 26 years ago to General Douglas MacArthur: "Global nuclear war," he said "has become a Frankenstein that will destroy both sides. No longer is it a weapon of adventure—the shortcut to international power. If you lose, you are annihilated. If you win, you only lose."

Any yet both sides went on building. Six thousand warheads by 1970; fourteen thousand by 1979; and today, together, the superpowers have twenty-two thousand strategic warheads. Each far more destructive than the bomb that devastated Hiroshima. Counting theater and battlefield weapons, we, together, have more than 50,000. The U.S. has the capacity to destroy the Soviet Union forty times over; and they can do the same to us.

The nuclear standoff has been matched in central Europe by the largest peacetime build-up of conventional military power in world history. More than six million men and women are on active duty on both sides of what we used to call the Iron Curtain, and they account for nearly 2/3 of the world's trillion dollar annual budget for military purposes.

Our rivalry with the Soviet Union was born in the bitter aftermath of the second World War. It quieted for a time after Stalin's death; again after the Cuban Missile Crisis; again during the detente of the Nixon years.

But Soviet policies have made a lasting change in our relationship impossible.

Today we have an opportunity—not a guarantee, but an opportunity—for something far more significant.

Because Mikhail Gorbachev and the people around him appear to reflect a real change—a new generation of Soviet leaders—more pragmatic, less ideological; leaders who have inherited a national on its way to becoming a third rate economic power.

French President Francois Mitterand has said he believes Gorbachev is the first Soviet leader since the Revolution to understand the flaws of the Communist system.

The Soviet Union's rate of economic growth has fallen in every five-year plan since the 1950's; Soviet farmers are less than one-seventh as productive as ours; alcoholism and poor health care have chopped six years off the life span of the average Russian male: infant mortality is up; the birth rate is down; and a majority of the population, for the first time under Communist rule, will soon be made up of non-Russian nationalities—whose loyalties to the Kremlin are tenuous at best.